

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

DARYON ROBINSON,

v.

DR. NAUGHTON,

Plaintiff,

Defendant.

Case No. 3:21-cv-00210-MMD-CSD

ORDER

11       *Pro se* Plaintiff Daryon Robinson, who is an inmate in the custody of the Nevada  
 12 Department of Corrections (“NDOC”), brought this action against Defendant Dr. Naughton  
 13 under 42 U.S.C. § 1983 for deliberate indifference to a serious medical need, an alleged  
 14 violation of his rights under the Eighth Amendment (ECF No. 5 (“Complaint”)). Before the  
 15 Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge  
 16 Craig S. Denney (ECF No. 31 (“R&R”)), recommending that the Court deny Dr.  
 17 Naughton’s motion for summary judgment (ECF No. 17 (“Motion”)). Dr. Naughton filed an  
 18 objection to the R&R (ECF No. 34 (“Objection”)).<sup>1</sup> Because the Court agrees with Judge  
 19 Denny’s analysis despite the content of the Objection, the Court will adopt Judge  
 20 Denney’s R&R in full and overrule Dr. Naughton’s objections.

21       The Court incorporates by reference and adopts Judge Denney’s description of  
 22 the case’s background and procedural history. (ECF No. 31 at 1-2.)

23       To start, Dr. Naughton objects to Judge Denney’s recommendation that his Motion  
 24 be denied because the parties’ competing declarations create genuine disputes of  
 25 material fact precluding summary judgment. (ECF Nos. 34 at 3-6.) See 28 U.S.C. §  
 26 636(b)(1) (providing that, where a party timely objects to a magistrate judge’s R&R, the  
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28       <sup>1</sup>The Court granted Dr. Naughton an extension of time to object to the R&R. (ECF  
 No. 33.) Robinson has not yet filed a response to the Objection.

1 Court is required to “make a de novo determination of those portions of the [R&R] to which  
2 objection is made”). Dr. Naughton more specifically argues that Robinson did not provide  
3 any evidence that any anesthetic or additional medical staff were required for the  
4 challenged procedure, and seems to dispute that Robinson’s sworn declaration is  
5 evidence. (ECF No. 34 at 3-6). Taking the second point first, Robinson’s sworn  
6 declaration (ECF No. 27 at 10) is evidence that Judge Denney properly considered. See  
7 Fed. R. Civ. P. 56(c)(1)(A), (4) (providing that declarations based on personal knowledge,  
8 setting out facts admissible in evidence that the declarant is competent to testify to, may  
9 be used to oppose motions for summary judgment). And as Judge Denney identified, the  
10 parties dispute whether nurses were present during the challenged procedure, and  
11 Robinson swears Dr. Naughton used no anesthetic. (ECF No. 31 at 6 (identifying disputes  
12 of material fact created by comparing ECF No. 17-1 with ECF No. 27 at 10).) As to the  
13 first point, there are insufficient facts before the Court to determine whether a lack of  
14 anesthetic during the procedure would constitute deliberate indifference to medical  
15 needs. More broadly, the Court agrees with Judge Denney’s analysis of Dr. Naughton’s  
16 Motion and overrules Dr. Naughton’s first objection because the competing  
17 declarations—particularly considering the lack of any other evidence—create genuine  
18 disputes of material fact rendering summary judgment inappropriate.

19 Next, Dr. Naughton objects that Judge Denney erred in his qualified immunity  
20 analysis and the Court should find Dr. Naughton entitled to qualified immunity. (ECF No.  
21 34 at 6-7.) The Court disagrees. As Judge Denney found, the Court cannot determine  
22 whether Dr. Naughton is entitled to qualified immunity for violating Robinson’s Eighth  
23 Amendment rights until the Court can determine whether Dr. Naughton’s conduct  
24 constituted a violation of Robinson’s Eighth Amendment rights. (ECF No. 31 at 6-7.) And  
25 as Judge Denney also found, disputes of material fact preclude the Court from making  
26 that determination at this time. (See *id.*) The Court accordingly also overrules Dr.  
27 Naughton’s second objection.

28 The Court notes that Dr. Naughton made several arguments and cited to several

1 cases not discussed above. The Court has reviewed these arguments and cases and  
2 determines that they do not warrant discussion as they do not affect the outcome of the  
3 Motion and R&R before the Court.

4 It is therefore ordered that Dr. Naughton's objection (ECF No. 34) to the Report  
5 and Recommendation of United States Magistrate Craig S. Denney is overruled.

6 It is further ordered that Judge Denney's Report and Recommendation (ECF No.  
7 31) is accepted and adopted in full.

8 It is further ordered that Dr. Naughton's motion for summary judgment (ECF No.  
9 17) is denied.

10 It is further ordered that the Court finds it appropriate to refer this case to Judge  
11 Denney to conduct a settlement conference under LR 16-5. If settlement discussions are  
12 unsuccessful, the joint pretrial order is due 30 days from the date the settlement  
13 conference is held.

14 DATED THIS 15<sup>th</sup> Day of June 2023.



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17 MIRANDA M. DU  
18 CHIEF UNITED STATES DISTRICT JUDGE  
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